

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANJELA KHALAFIAN,

Plaintiff,

v.

MICHAEL J. ASTRUE,
Commissioner of Social Security,

Defendant.

NO. CV 11-4570 AGR

MEMORANDUM OPINION AND
ORDER

Plaintiff Anjela Khalafian filed a complaint on June 3, 2011. Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the magistrate judge on July 6, 2011 and March 23, 2012. (Dkt. Nos. 8, 17.) On March 19, 2012, the parties filed a Joint Stipulation ("JS") that addressed the disputed issue. The court took the matter under submission without oral argument.

Having reviewed the entire file, the court affirms the decision of the Commissioner.

I.

PROCEDURAL BACKGROUND

Khalafian filed applications for disability insurance and supplemental security income benefits on October 17, 2005 and October 31, 2005, respectively. Administrative Record ("AR") 330. The applications were denied initially and upon reconsideration. AR 29-30. Khalafian requested a hearing by an Administrative Law Judge (ALJ). AR 26. On October 31, 2007, the ALJ conducted a hearing at which Khalafian and a vocational expert testified. AR 299-313. On February 14, 2008, the ALJ issued a decision denying benefits. AR 12-20. On August 29, 2008, the Appeals Council denied the request for review. AR 4-6. On October 24, 2008, Khalafian filed an action in this court. On July 8, 2009, the court approved a joint stipulation for voluntary remand to the Commissioner for further proceedings consistent with the terms of the stipulation. AR 336-39. On September 17, 2009, the Appeals Council vacated the final decision of the Commissioner and remanded to an ALJ for further proceedings consistent with the court's order. AR 342. Khalafian filed subsequent concurrent applications for supplemental security income benefits on July 29, 2009, and for disability benefits on November 9, 2009. AR 318.

On January 5, 2011, a different ALJ conducted a hearing at which Khalafian and a vocational expert testified. AR 660-84. On March 14, 2011, the ALJ issued a decision denying benefits. AR 314-30. This action followed.

II.

STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this court reviews the Commissioner's decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence, or if it is based upon the application of improper legal standards. *Moncada v. Chater*, 60 F.3d 521, 523 (9th Cir. 1995) (per curiam); *Drouin v. Sullivan*, 966 F.2d 1255, 1257 (9th Cir. 1992).

1 322-23. Khalafian could perform her past relevant work as a sales attendant and
2 pantry goods maker, as actually performed. AR 329-30.

3 **C. Past Relevant Work**

4 Khalafian's sole claim is that the ALJ erred in concluding she could return
5 to her past work as a sales assistant and pantry goods maker. She argues the
6 ALJ did not properly consider the opinion of her treating primary care physician,
7 Dr. Janoian, that she would have difficulties in regular work settings with regular
8 and proper conduct.

9 "At step four of the sequential analysis, the claimant has the burden to
10 prove that he cannot perform [her] prior relevant work 'either as actually
11 performed or as generally performed in the national economy.'" *Carmickle v.*
12 *Comm'r of Soc. Sec. Admin.*, 533 F.3d 1155, 1166 (9th Cir. 2008) (citation
13 omitted). "Although the burden of proof lies with the claimant at step four, the
14 ALJ still has a duty to make the requisite factual findings to support his
15 conclusion." *Pinto v. Massanari*, 249 F.3d 840, 844 (9th Cir. 2001). "This is
16 done by looking at the 'residual functional capacity and the physical and mental
17 demands' of the claimant's past relevant work." *Id.* at 844-45; see also 20 C.F.R.
18 §§ 404.1520(e), 416.920(e).

19 On October 25, 2010, Dr. Janoian diagnosed hypertension, depressive
20 disorder mixed with anxiety and maladjustment syndrome, osteoarthritis (L/S,
21 C/S, neck pain), peripheral neuropathy (bilateral hand numbness),
22 hyperlipidemia, and obesity. AR 632. Dr. Janoian reported Khalafian's
23 symptoms as fear of being alone, insomnia, irritability and crying spells. These
24 symptoms escalated because of her grandchild's chromosomal abnormality,
25 which rendered him unable to talk or move his neck or extremities. AR 630. Dr.
26 Janoian observed that Khalafian was tearful throughout her visit and appeared to
27 be emotionally very depressed. AR 632. He advised her to seek professional
28 psychological help, but stated she is financially unable to afford expensive

1 treatments. AR 632-33. "Emotional instability and poor control over her body
2 movements and her emotions will present with difficulties in regular work
3 settings, where regular attendance and proper conduct is expected." AR 633.

4 The ALJ stated he could not give Dr. Janoian's opinion much weight for
5 two reasons: (1) "[t]here is no indication that Dr. Janoian has ever evaluated the
6 claimant's psychiatric claims and symptoms using any generally accepted
7 psychiatric method, or has even conducted a mini mental status examination"
8 and (2) "his assessment is not consistent with the reports of Dr. Simonian, the
9 [treating] psychiatrist with the greatest longitudinal understanding of the
10 claimant's psychiatric symptoms, or the state agency examining and evaluating
11 psychiatric consultants." AR 325.

12 An opinion of a treating physician is given more weight than the opinion of
13 non-treating physicians. *Orn v. Astrue*, 495 F.3d 625, 631 (9th Cir. 2007). When
14 a treating physician's opinion is contradicted by another doctor, "the ALJ may not
15 reject this opinion without providing specific and legitimate reasons supported by
16 substantial evidence in the record. This can be done by setting out a detailed
17 and thorough summary of the facts and conflicting clinical evidence, stating his
18 interpretation thereof, and making findings." *Id.* at 632 (citations and quotation
19 marks omitted). "When there is conflicting medical evidence, the Secretary must
20 determine credibility and resolve the conflict." *Thomas v. Barnhart*, 278 F.3d
21 947, 956-57 (9th Cir. 2002) (citation and quotation marks omitted).

22 The ALJ's first reason for discounting Dr. Janoian's opinion is supported by
23 substantial evidence. An ALJ need not accept the opinion of a treating physician
24 if that opinion is inadequately supported by clinical findings.¹ *Bray v. Comm'r of*
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26 ¹ Khalafian cites *Sanchez v. Apfel*, 85 F. Supp. 2d 986 (C.D. Cal. 2000),
27 for the proposition that "the fact that there was no objective evidence offered in
28 support of [the] treating physician's assessment of [the] claimant's mental
impairment was not [an] adequate basis for rejecting that assessment." JS at 14-
15. The court in *Sanchez* merely acknowledged that the diagnostic techniques in

1 Soc. Sec. Admin., 554 F.3d 1219, 1228 (9th Cir. 2009); *Batson v. Comm’r of the*
 2 SSA, 359 F.3d 1190, 1995 (9th Cir. 2004) (ALJ may discount treating physician’s
 3 opinion that “did not have supportive objective evidence”). The medical records
 4 from Dr. Janoian’s clinic do not indicate any mental status examination or
 5 psychological testing. AR 199-236, 258-83, 513-616. In 2006, Khalafian was
 6 reported to be anxious once, with no explanation. AR 519. On January 18,
 7 2007, Khalafian was reportedly anxious and agitated with poor judgment. AR
 8 524. Something went wrong with her blood pressure testing machine at home.
 9 She was scared and came to the doctor’s office. It was noted that Khalafian
 10 easily calmed down when reassured about her condition, and that she had a
 11 normal stress test in April 2006.² Dr. Janoian noted Khalafian was not taking her
 12 prescribed medications at the time. *Id.* On November 5, 2007, Khalafian
 13 reported that she became anxious after seeing her neighbor drop unconscious,
 14 and that she became very anxious each time she checked her blood pressure or
 15 came to the doctor’s office. AR 545. At that time, Khalafian did not want to take
 16 the prescribed Buspar medication and declined psychotherapy. AR 547. In
 17 2008, Khalafian was noted to be anxious once, with an explanation that Khalafian
 18 has a sick grandchild with a genetic disease. AR 560. In 2009, Dr. Janoian

20 the field of psychiatry are less tangible than the objective laboratory testing
 21 available for many physical illnesses. *Sanchez*, 85 F. Supp. 2d at 992. “The
 22 report of a psychiatrist should not be rejected simply because of the relative
 23 imprecision of the psychiatric methodology or the absence of substantial
 24 documentation, unless there are other reasons to question the diagnostic
 25 technique.” *Id.* (quoting *Christensen v. Bowen*, 633 F. Supp. 1214, 1220-21 (N.D.
 Cal. 1986)). In *Sanchez*, the treating records contained a Global Assessment of
 Functioning score, self-mutilation, hallucinations, and hospitalization after a
 suicide attempt. *Sanchez*, 85 F. Supp. 2d at 991. By contrast, the ALJ in this
 case discounted Dr. Janoian’s opinion because it did *not* contain psychiatric
 diagnostic techniques.

26 ² The ALJ reviewed the stress test. Khalafian had “good cardiovascular
 27 conditioning for age and gender.” AR 449. The stress test had a “good
 28 outcome.” *Id.* Khalafian exercised for 9 minutes on a Bruce protocol and
 achieved 10 METS. *Id.* The ALJ noted that 10 METS consists of vigorous
 activity. AR 326.

1 noted Khalafian was depressed twice, in July and October 2009. Khalafian was
2 crying over her grandchild's genetic disease. AR 586. During the period March
3 2010-July 2010, Khalafian reported feeling hopeless and depressed over her
4 grandchild's genetic disease. AR 609, 612, 615. In September and November
5 2010, Khalafian was noted as anxious, without explanation.³ AR 589, 591.

6 With respect to the ALJ's second reason, Khalafian argues there is nothing
7 in the record that disputes Dr. Janoian's opinion. JS at 4. The ALJ reviewed the
8 records of Khalafian's treating psychiatrist, Dr. Simonian. AR 323-24. In
9 November 2006, based on his mental status examination, Dr. Simonian found
10 Khalafian had coherent thought process, no looseness of association, constricted
11 affect, anxious mood, and was "somewhat depressed." AR 256. Dr. Simonian
12 found no delusional thinking and no hallucinations. Her intellectual function and
13 memory were average, but her concentration was poor. On Axis V, he assessed
14 her functional ability to be 50%. His diagnosis was panic disorder, depressive
15 disorder, not otherwise specified, and dependent personality features. *Id.* More
16 recently, on December 17, 2010, Dr. Simonian noted that Khalafian was in tears
17 when talking about her grandchild, who has a congenital malformation, has
18 frequent seizures and requires constant care. AR 636-37. Dr. Simonian again
19 diagnosed depressive disorder, not otherwise specified, and dependent
20 personality disorder. AR 637. Her functional ability remained at 50% and her
21 mental status examination was unchanged. *Id.*

22 The ALJ reviewed the examining psychologist's report in February 2006.
23 AR 323; AR 181-86. Khalafian's thoughts were coherent and her speech was
24 clear, but response time was delayed. Although Khalafian reported that she had
25 concentration and memory problems (AR 182), her testing indicated a grossly
26 intact memory and an adequate attention span with the ability to work without

27 ³ As the ALJ noted, Dr. Janoian treated Khalafian conservatively with
28 medication and exercise. AR 323, 326, 591-92, 613, 615.

1 distraction on nonverbal tasks. AR 183. Based on the Comprehensive Test of
2 Nonverbal Intelligence, Khalafian's nonverbal intelligence was in the borderline
3 range. AR 184. Dr. Brawer diagnosed complicated bereavement secondary to
4 the death of Khalafian's mother and nonverbal intellectual functioning in the
5 borderline range. "Based on test results and behavioral presentation, the patient
6 would be able [to] learn a simple, repetitive task Her ability to sustain
7 attention and concentration for extended periods of time may be mildly
8 diminished, due to cognitive and emotional factors. During testing, the patient
9 demonstrated mildly diminished attention, concentration, persistence and pace in
10 completing tasks." AR 185. Dr. Brawer found that Khalafian exhibits depressive/
11 anxiety symptoms "which may result in mild limitations in ability to effectively
12 manage customary work stresses and persist for a regular workday." *Id.*
13 Khalafian "seems capable of following a routine and organizing herself for basic
14 tasks," but "given her dysphoria and somatic complaints, the patient may have
15 difficulty maintaining the motivation and stamina." *Id.*

16 The ALJ found the state agency physician's opinion to be consistent with
17 Dr. Brawer's report. In May 2007, Dr. Carlson found that Khalafian was not
18 significantly limited in her ability to understand, remember and carry out simple
19 instructions and work-like procedures. AR 237. She was not significantly limited
20 in her ability to sustain an ordinary routine without special supervision, and her
21 ability to maintain socially appropriate behavior. AR 237-38. She had mild
22 limitation in maintaining concentration, persistence or pace (AR 249), and was
23 moderately limited in her ability to perform activities within a schedule, maintain
24 regular attendance, and be punctual within customary tolerances. AR 237. Dr.
25 Carlson found Khalafian capable of performing simple repetitive tasks. AR 239.

26 The vocational expert testified that a claimant who could perform simple
27 repetitive tasks would not be precluded from returning to her past relevant work.
28 AR 681-82. The ALJ did not err.

1 IV.

2 **ORDER**

3 IT IS HEREBY ORDERED that the decision of the Commissioner is
4 affirmed.

5 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this
6 Order and the Judgment herein on all parties or their counsel.

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9 DATED: July 10, 2012



10 ALICIA G. ROSENBERG
11 United States Magistrate Judge
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